

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Marcus Antonio Frierson,) Civil Action No. 5:13-452-MGL
Plaintiff,)
v.)
Ann Hughes, Gary Toney,) **OPINION AND ORDER**
Defendants.)

)

Plaintiff Marcus Antonio Frierson (“Plaintiff”), an inmate in the South Carolina Department of Corrections, proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983 February 20, 2013 alleging that Defendants violated his constitutional rights. (ECF No. 1). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B), D.S.C., this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial handling and a Report and Recommendation (“Report”). On May 14, 2013, Defendants Ann Hughes and Gary Toney (“Defendants”) filed a motion to dismiss. (ECF No. 20). The Court entered an order on May 15, 2013, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the importance of a dispositive motion and of the need for him to file an adequate response. (ECF No. 22). On May 24, 2013, Plaintiff filed opposition (ECF No. 28) to Defendants’ motion to dismiss, as well as a motion for summary judgment. (ECF No. 29).

On November 14, 2013, Magistrate Judge West issued a Report recommending that Defendants’ motion to dismiss be granted and Plaintiff’s motion for summary judgment be

deemed moot. (ECF No. 42). The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. (ECF No. 42-1). Plaintiff filed no objections and the time for doing so expired on December 5, 2013.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court reviews the Report and Recommendation only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After reviewing the motions and responses, the record, and the Report and Recommendation of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 42) by

reference into this order. It is therefore ORDERED that Defendants' motion to dismiss (ECF No. 20) is GRANTED and this case is dismissed with prejudice. Plaintiff's motion for summary judgment is deemed MOOT. (ECF No. 29) .

IT IS SO ORDERED.

/s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
December 10, 2013